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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS E. COVERSTONE

Appeal 2008-3197
Application 10/020,094
Technology Center 2600

Oral Hearing Held: August 12, 2008

Before JOSEPH F. RUGGIERO, SCOTT R. BOALICK, and JOHN A. JEFFERY, Administrative Patent Judges.

ON BEHALF OF THE APPELLANT:

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ALSO PRESENT: THOMAS E. COVERSTONE

The above-entitled matter came on for hearing on Tuesday, August 2008, commencing at 2:20 p.m., at the U.S. Patent and Trademark

1 Office, 600 Dulany Street, 9th Floor, Alexandria, Virginia, before Victoria
2 L. Wilson, Notary Public.

3

4 THE USHER: Calendar Number 19, Appeal Number 2008-3197.

5 Mr. Auchterlonie.

6 JUDGE RUGGIERO: Good afternoon.

7 MR. AUCHTERLONIE: May it please the Court -- I'm Richard
8 Auchterlonie, attorney of record, and I'm representing Thomas Coverstone,
9 the applicant, who is also here.

10 This case has been briefed and one of the issues is the broadest
11 reasonable construction for one of the claim terms and in that claim term is
12 targeted "broadcast."

13 And upon looking over the record, we also recognize that there is
14 another issue in this case and that is whether one of the claim elements of
15 Claim 18 is entirely missing. So one of the reasons for the oral argument is
16 to be sure there has been no confusion regarding Claim 18.

17 This invention generally deals with a kind of targeted broadcast where
18 there is a condition for determining the group of users that receive the
19 targeted broadcast.

20 All of the claims on appeal deal with a wireless communication
21 system that is used with wireless communication devices and some of the
22 claims deal with a position location system that is used by or in this wireless
23 communication system.

24 But one of the uses of this system is to give a conditional notification
25 to a user of one of the wireless devices, and in the drawings and in the
26 description, that condition is labeled "notify a user if X in location Y."

1 So in that situation, there is a first condition that is sort of a general
2 condition and then there is a more specific condition that is dependent on the
3 location of the wireless device.

4 So, for example, if I had one of these wireless devices in the system
5 and I were driving across Texas, I might want some barbecue, so I would
6 type a message into my system saying, "Notify me if I am 50 miles from a
7 barbecue restaurant that is a subscriber to the system."

8 Once I would get within 50 miles or if there were already some
9 barbecue restaurants within 50 miles of my location, I would get back a
10 response and then I could drive to the barbecue restaurant.

11 Another example in the specification that is even more dependent on
12 position is where the condition is a location between two subscribers.

13 So, for example, if I were a group manager of an engineering group
14 and we were on a trip and I wanted to be sure that all the members of my
15 group had arrived, I might request the system to notify me when one of my
16 group members was, say, within 100 meters of my location. So I would get,
17 say, an e-mail message that each person has arrived, say, at our hotel and
18 then I could follow up from there.

19 Getting to the rejections, there are six independent claim groups that
20 are on appeal and the one that I found most interesting was Claim 18
21 because Claim 18 appears to include all of the elements that would be used
22 in at least one of the examples that I just gave.

23 The claim element that's most interesting is the claim element at the
24 end and the paragraph at the end discusses that in this wireless
25 communication system, there is a transmitter for transmitting targeted
26 advertisement broadcasts to the wireless communication device at least

1 based on the current location of the wireless communication device.

2 One of the issues of fact which has been in dispute, although in the
3 reply it was sort of discussed as a claim interpretation issue, is whether the
4 targeted advertisement broadcasts or any broadcasts in one of the references
5 was at least based on the current location of the wireless communication
6 device.

7 And the reference in question is the Ito reference and there is a
8 specific paragraph in the Ito reference that was relied on with respect to
9 Claim 18 and similar claims that dealt with targeted advertisement
10 broadcasts.

11 And that paragraph says, conversely, if it is determined in step 136
12 that it is not a special news, it is next judged whether or not the signal is
13 information such as advertisements, events, or the like, and in parentheses,
14 information on tourism, information on events at stores, and so on, near the
15 current position, right parentheses, and then in parentheses step 138, right
16 parentheses, period.

17 In looking at the reference as a whole, however, the reference doesn't
18 really say how that desired result of giving information about tourism or
19 information on events at stores and so on near the current position is actually
20 produced.

21 The record seems to assume that it is produced in a fashion similar to
22 what is being claimed but I have yet to find that there is an explicit
23 disclosure in the reference of how that would be done.

24 JUDGE JEFFERY: How are you determining the location of the
25 vehicle in the Ito reference? Doesn't it estimate the position of the vehicle
26 with respect to a previous history of where that particular wireless device

1 has been? I'm referring specifically to figure 11C in that estimation process.

2 MR. AUCHTERLONIE: Figure 11C says that there are two known
3 locations and that circumstance may arise where the system wants to
4 determine the location of the wireless device where there isn't any precise
5 information but there may be information that says this device is within a
6 certain distance, for example, from a particular base station transmitter.

7 JUDGE JEFFERY: Yes.

8 MR. AUCHTERLONIE: And in that case, given the fact that, say, it
9 was at a first point at about the same distance and then at a second time it
10 was very near the base station transmitter, that the system then would
11 assume that it had moved on in, say, a straight line.

12 JUDGE JEFFERY: Yes, and when the signal reduces to a certain
13 threshold level, it is not receiving that signal like it used to, it then assumes
14 that it has moved on to the next position as shown in C3 --

15 MR. AUCHTERLONIE: That's correct.

16 JUDGE JEFFERY: -- figure, as I understand it. So the question
17 would be this functionality with respect to the advertisements and events at
18 or near the current position, isn't there at least an implicit suggestion that
19 somehow that is basing the advertisement that's being delivered based on
20 what it has determined to be the position of that particular wireless device?

21 MR. AUCHTERLONIE: No, because in that example, the system
22 knows that there is communication at a base station, and what's more
23 important, there is no idea of a selective group of users to receive that
24 advertisement. The idea is that you want anybody and everybody that is
25 near a store, for example, to get the advertisement, so --

26 JUDGE JEFFERY: Is there any definition in the disclosure

1 specifically defining a "targeted broadcast"?

2 MR. AUCHTERLONIE: There is no intent to give a lexicographer-
3 type special meaning definition.

4 JUDGE JEFFERY: Sure. And as I understand the examiner's
5 position, the examiner seems to be taking the position that this information
6 that's delivered by the base station, whether it be weather, traffic, whatever it
7 might happen to be, is relevant: it would only be relevant to those particular
8 users that are at or near a particular location, it is relevant to the information.

9 Would you not agree that that relevance, at least -- you know, why
10 would I care about information that has nothing to do with my location?

11 MR. AUCHTERLONIE: Well, the reason is that a store doesn't care
12 about the particular users, it only cares about users that are near to the store.

13 JUDGE JEFFERY: And I think that's the crux of the examiner's
14 position in terms of that being a targeted broadcast or at least reading on or
15 fully meeting a targeted broadcast, in that it is targeted to those particular
16 users, recipients, if you will, of this information to which it would be
17 relevant.

18 MR. AUCHTERLONIE: We don't disagree with that and the reason
19 that we are here is that similar people have said the same thing and my
20 response is the claim doesn't talk about the reception being based on the
21 current location, it says the transmission.

22 So the claim is, basically, being turned upside-down, and your
23 reaction is very similar to other people that I have discussed this with at my
24 office.

25 They say, well, if the reception is dependent on the position, the
26 transmission must also be and I look at the claim and the -- the limitation at

1 the end of the Claim 18 is very clear that it is talking about the transmitting
2 at least being based on the current location of the wireless communication
3 device --

4 JUDGE JEFFERY: Sure.

5 MR. AUCHTERLONIE: -- not the reception.

6 JUDGE JEFFERY: Fair enough.

7 MR. AUCHTERLONIE: And my position is that since this is a 102
8 rejection, the reference has to disclose that the transmitting is based on the
9 current location of the wireless communication device.

10 JUDGE JEFFERY: Sure. Let me ask you this. You know, there is a
11 whole litany of types of information that get transmitted from these base
12 stations and one that particularly jumped out at me was the routing
13 information.

14 At step 140 in figure 12, it allows the user within the vehicle to enter
15 in a destination and also the current position. I'm reading from column 11,
16 really beginning at line 25 or so down to about 38.

17 My understanding of the routing information is that the user enters in
18 where they are, or the system determines that automatically, but the
19 destination is sent from the vehicle or wherever the wireless device is to the
20 base station.

21 The base station then, in turn, sends that to some sort of facility that
22 does a computation of the optimum routing and then that gets sent back to
23 the base station which, in turn, sends it back to the vehicle. Why wouldn't
24 that be a targeted broadcast? Isn't only that particular vehicle causing that
25 particular exchange of information to occur?

26 MR. AUCHTERLONIE: Well, the question you are asking, I think,

1 goes to the second issue in this case and that is the interpretation of what a
2 targeted broadcast is.

3 And with respect to some of the claims, for example, Claim 10, what
4 you are asking is highly relevant and the answer does depend on the
5 interpretation of "targeted broadcast" and the question really is can a single
6 message such as a route that has been computed as sent to the user to be
7 displayed, say, on the display screen in a car, whether that is a targeted
8 broadcast.

9 And the position taken in the briefs is that it is not and, if it were, I
10 think you are correct that that would affect some of the claims, that is the
11 claims that deal with targeted broadcasts and not targeted advertisements,
12 and it also wouldn't affect the Claims 22 and 35 that deal with the selecting
13 step.

14 Our view is that a message that's going to a single user, say, at the
15 user's request or the request of another user, is not a targeted broadcast.

16 And this gets into the matter of claim interpretation and the case that
17 was cited in our briefs is the Inova Pure versus Safari and, in particular, the
18 discussion there citing the law or at least restating it, that, basically, says
19 while not an absolute rule, all claim terms are presumed to have meaning in
20 the claim.

21 So our view is that the words "targeted broadcast" mean something
22 more than just, say, a single telephone call where it is the person placing the
23 call that has selected the recipient and it is also different in a system where
24 the requester is a user device and, basically, says I want a route from my
25 current location to a destination.

26 Our view is that those two types of situations aren't targeted

1 broadcasts and that really gets into what is a broadcast and what is a
2 targeted.

3 In our view, a broadcast is something that's sent out to a large group
4 of users and the idea of targeting is that you are selecting a subset of that
5 group and that, in contrast to the prior art, you are actually doing a first step
6 of selecting that group that you want to receive the broadcast and then you
7 are transmitting the broadcast more selectively to the members of that group.

8 So if you look at the six claims in issue, the last two independent
9 claims, 22 and 35, deal with the fact that you are first selecting a targeted
10 broadcast audience and then you are transmitting the targeted broadcast to
11 that targeted broadcast audience.

12 And our view is that if you look at, say, the claim set as a whole, you
13 have a claim like Claim 18 that has a narrower term "targeted advertisement
14 broadcasts" and it really appears that there hasn't been much dispute with --
15 in the record, as it does appear that a targeted advertisement broadcast isn't
16 something like a single telephone call or a request for a route.

17 None of those two instances would be interpreted as an advertisement.
18 Claim 14, for example, also uses "targeted advertisement broadcasts," so it
19 wouldn't be an example of a telephone call or a request by a user for a route.
20 So Claims 14 and 18 are distinguished on the fact that it is an advertisement.

21 Claims 22 and 35 are distinguished on the grounds that it is a -- that
22 there is an initial step of selecting a targeted broadcast audience. So that
23 gets down to perhaps what are the broader claims and that's Claims 10 and
24 11.

25 So in that situation, we are relying on the case law that there has to be
26 given some meaning to the terms "targeted" and "broadcast," and in our

1 view, the reasonable construction of those terms and also especially in view
2 of the last two claims is that a targeted broadcast requires a particular
3 audience and that audience is a subset of everybody that would be capable of
4 receiving the broadcast.

5 JUDGE BOALICK: I guess if you are an advertiser, wouldn't you
6 want to reach everybody within the reach of your broadcast and wouldn't it
7 be reasonable to say a targeted audience that you are transmitting to is
8 everybody that's capable of receiving your broadcast? I mean I don't see
9 anything that necessarily requires your term to be a subset of everybody.

10 MR. AUCHTERLONIE: Well, it gets to the fact that the claim sets
11 up an environment of the communication system that includes the wireless
12 communication devices and the fact that in the description and also in the
13 last two dependent claims, there is described and claimed selecting a
14 targeted broadcast audience and so the idea that you have a group of users
15 that you could broadcast to would mean that if it were targeted or not used,
16 you would be simply broadcasting to everybody.

17 JUDGE JEFFERY: But what about the situation along those same
18 lines in Ito where -- and I think you even say this in the briefs -- that the only
19 recipients who are going to receive this transmission from the base stations
20 are those folks that have the types of receivers that can pick that up, you
21 know, that are matched to the base station.

22 If I have an AM/FM radio in my car, I'm not going to receive the base
23 station transmission. So I'm broadcasting to a subset of recipients that have
24 that type of receiver, am I not?

25 MR. AUCHTERLONIE: I think that's true but I think the reason for
26 that argument is in the context of saying that the word "targeted" has to

1 mean something more than broadcasts and that's just, basically, again, the
2 claim construction rule that every term in the claim is supposed to be given
3 meaning where --

4 JUDGE JEFFERY: Sure.

5 MR. AUCHTERLONIE: -- unless some -- there is some overriding
6 reason.

7 JUDGE JEFFERY: I understand. And in that example, I am giving it
8 meaning to the extent of the targeting, if you will.

9 I'm picking -- I want to broadcast my transmission to only those
10 people that have this type of receiver, that is to say the type of receiver that
11 can receive the base station transmissions, not anything else, I'm not
12 interested in people that can receive standard FM radio, let's say. Would
13 that not -- why is that not targeted.

14 MR. AUCHTERLONIE: Well, it is because if you left the word out
15 of the claim, it would mean exactly the same thing. That argument would be
16 just as applicable to the claim if the word "targeted" were there or if it were
17 not, so as a matter of law, it is, basically, ignoring or removing that word
18 from the claim.

19 JUDGE JEFFERY: And why is the routing information not targeting
20 to that particular recipient in the step? I want to make sure I'm clear on your
21 position. In that particular instance, the transmission is narrowly tailored to
22 that particular requester that wants that particular routing.

23 I'm not sending that transmission, as I understand it from this
24 disclosure, to anyone else but that particular requester. Why is that not a
25 targeted transmission -- broadcast -- excuse me -- "targeted broadcast"?

26 MR. AUCHTERLONIE: Well, it is the idea that that's just like a

1 wireless telephone system where a call to one specific user by the person
2 placing the call, that that would not be a targeted broadcast. That would be
3 simply a message to a specified user, one specified user of the system.

4 JUDGE JEFFERY: So that's not even a broadcast, you are saying, in
5 effect, that's simply a one-to-one transmission, not a broadcast. I'm not
6 going to many, I'm only going to that user, so that's not a broadcast, let alone
7 a targeted broadcast. Is that what I think I hear there?

8 MR. AUCHTERLONIE: That's right. And my view of reading the
9 arguments and the specification and looking at the claims, it is the idea that
10 in the very precise specific embodiment of a targeted advertisement
11 broadcast, everybody knows that it is not like making a phone call to one
12 particular user and I think the intent was to draft claims that had some
13 varying scope and the idea was that, well, if we use the term "targeted
14 advertisement broadcast" in all the claims, there would be a whole dispute
15 about a whole group of infringers that would say what I'm doing isn't an
16 advertisement.

17 For example, they would say the example of notifying a group leader
18 of a management team of when his team members have arrived at the airport
19 or arrived at the hotel, he'd say, well, that's not an advertisement, but it has
20 the same characteristics, in that it is not a broadcast to everybody but, then
21 again, it is not a specific message for just one particular wireless device or
22 one particular user.

23 JUDGE BOALICK: So are you saying that, for example, in Claim
24 18, if an alleged infringer transmitted to every user that was capable of
25 receiving a broadcast within the range of that transmitter, they would not
26 infringe your claim?

1 MR. AUCHTERLONIE: I think that has been the position already in
2 the reply brief, that simply sending a message out to everybody and, in fact,
3 as far as I can see, that was the intent in Ito of transmitting a message about
4 a store having a sale and wanting the people in the vicinity of that store to
5 get the message, you would do that.

6 JUDGE JEFFERY: Well, just wanting the people in the vicinity of
7 the store to get the message.

8 MR. AUCHTERLONIE: That's right.

9 JUDGE JEFFERY: And, well, there is a tie-in there to the current
10 position of the -- that particular wireless device, is there not? I mean isn't
11 that who they are trying to target, if you will, the people in the current
12 vicinity of the store? Isn't that a targeted broadcast?

13 MR. AUCHTERLONIE: Well --

14 JUDGE JEFFERY: Targeted advertisement broadcast, I guess I
15 should say, in the context of the claim?

16 MR. AUCHTERLONIE: Well, again, we have limitations in those
17 claims that it is not -- it is not a broadcast by having the transmission or the
18 transmitting being based on the current position. Again, it is the reception.

19 So it is the idea that you may achieve a similar effect but you are not -
20 - you are not using the method that's described in the patent, that is you are
21 not selecting the group of users that are recipients and then transmitting to
22 them, which is the targeted broadcast concept that is involved and is
23 described in the patent and also very specifically claimed in some of the
24 dependent claims.

25 So, basically, what I am saying is we are not -- I'm not basing the
26 patentability of the all of the claims on that concept but where you get into

1 the idea of the trends or the history of positions or the current position, all
2 the claims are -- have something that is tied into the fact that we are not
3 simply broadcasting to everybody that's capable of receiving, that there is
4 something else that is selecting the users that get the message and respond to
5 the message.

6 JUDGE RUGGIERO: I think that's it.

7 MR. AUCHTERLONIE: Thank you very much.

8 JUDGE RUGGIERO: Thank you.

9 (Whereupon, the proceedings at 2:48 p.m. were concluded.)